

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

MS. TIGER,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	No. 14-2312-JDT-dkv
	)	
JASON S. PYNKALA, ET AL.,	)	
	)	
Defendants.	)	

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ORDER DENYING PLAINTIFF’S MOTION FOR RECONSIDERATION

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The *pro se* Plaintiff, Ms. Tiger, filed this civil action pursuant to 42 U.S.C. § 1983 against various individuals and entities on April 30, 2014. (ECF No. 1.) On June 6, 2014, Magistrate Judge Diane K. Vescovo directed that process be issued and served on the Defendants. (ECF No. 7.) Following service of process, various Defendants filed motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (ECF Nos. 13, 14, 15 & 19.) After responses and replies were filed, Magistrate Judge Vescovo issued a Report and Recommendation (“R&R”) in which she recommended granting the Defendants’ motions to dismiss. (ECF No. 28.) Plaintiff filed objections (ECF No. 32), to which Defendants responded (ECF No. 33).

On October 30, 2014, the Court adopted the R&R and granted the motions to dismiss. (ECF No. 34.) The Court also ordered Plaintiff to show cause why the claims against the two remaining Defendants should not also be dismissed for failure to state a claim. (*Id.* at 3-4.)

Plaintiff responded (ECF No. 37), but the Court issued an order of dismissal on January 2, 2015, finding that Plaintiff had not shown that the claims should proceed (ECF No. 42); judgment was entered on January 5, 2015 (ECF No. 43). Plaintiff filed a notice of appeal on January 29, 2015 (ECF No. 45), which was docketed in the Sixth Circuit on February 2, 2015, as case number 15-5103.

Also on January 29, 2015, Plaintiff filed a motion for reconsideration. (ECF No. 47.) A duplicate copy of the motion was filed on February 9, 2015. (ECF No. 50.) Plaintiff contends that the case should not have been dismissed because Defendants failed to answer her discovery requests and the Court failed to rule on her requests for disclosure. However, Defendants filed motions to dismiss for failure to state a claim, not motions for summary judgment. The Court was not required to rule on Plaintiff's motion to compel<sup>1</sup> and allow her to complete discovery prior to ruling on the motions, which raised legal issues requiring no factual development. *See Mitchell v. Acousti Eng'g Co.*, No. 2:13-cv-0523, 2013 WL 4718947, at \*5-6 (M.D. Tenn. Sept. 3, 2013) (granting Rule 12(b)(6) motion to dismiss prior to ruling on plaintiff's pending discovery motions was not erroneous).

Plaintiff also continues to complain because the Court stated that her objections to the Magistrate Judge's R&R were untimely. (ECF No. 34 at 2 & n.2.) She asserts the objections were timely because she mailed them on the date they were due, October 24, 2014. She cites

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<sup>1</sup> Plaintiff did not actually file five motions seeking disclosure, as she states in the motion to reconsider. She referred to her outstanding discovery requests in several of her *responses* to Defendants' motions, but she did not file a motion to compel discovery until November 12, 2014. (ECF Nos. 38 & 39.)

Federal Rule of Civil Procedure 5(b)(2)(C), which provides that service of a document is complete upon mailing. As the Court explained in the order adopting the R&R, the order granting Plaintiff an extension of time in which to file her objections specifically stated, “Plaintiff shall have through and including October 24, 2014, in which to *file* objections” to the R&R. (ECF No. 31 (emphasis added).) There is a difference between actually filing a document and serving a document, and the extension order required filing by October 24th; therefore, Rule 5(b) was not applicable. In any event, it makes no difference because the Court indicated that it had considered the objections even though they were untimely. (ECF No. 34 at 2.)

Nothing in the motion for reconsideration persuades the Court that the judgment should be set aside. Therefore, the motion is DENIED.

IT IS SO ORDERED.

s/ **James D. Todd**  
JAMES D. TODD  
UNITED STATES DISTRICT JUDGE